UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,178	08/11/2006	Achim Hansen	1093-161 PCT/US	5881

23869 7590 08/21/2009

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET, NY 11791

EXAMINER	
LEWIS, JUSTIN V	
ART UNIT	PAPER NUMBER
3725	
MAIL DATE	DELIVERY MODE
08/21/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/589,178	**Applicant(s)** HANSEN, ACHIM	
	Examiner JUSTIN V. LEWIS	**Art Unit** 3725	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Dana Ross/
Supervisory Patent Examiner, Art Unit 3725

/Justin V. Lewis/
Examiner, Art Unit 3725

Continuation of 11. does NOT place the application in condition for allowance because:
In response to Applicant's argument that figs. 1 and 6 of Hardwick present two differing embodiments (see Applicant's Arguments/Remarks pg. 10, lines 1-3), Examiner respectfully asserts that fig. 6, taken alone anticipates the features of fig. 1, as indicated in Applicant's Arguments/Remarks, pg. 4-10. As such, Fig. 6 continues to anticipate the features previously referred to within fig. 1.

In response to Applicant's argument that reference number 20 within fig. 1 is absent from fig. 6, and as such, fig. 6 fails to teach a "security device" (see Applicant's Arguments/Remarks pg. 10, line 17- pg. 11, line 2), Examiner respectfully asserts that upon comparing figs. 1 and 6, it is obvious that, although not specifically numbered "20," fig. 6 indeed shows such a "security device."

In response to Applicant's argument that Hardwick fails to disclose three moiré layers (see Applicant's Arguments/Remarks, pg. 11, lines 10-11), Examiner respectfully asserts that Applicant's claim 16 fails to claim three moiré layers. Instead, Applicant claims "a first layer containing a moiré pattern" and "two or more secondary layers which each contain a respective moiré analyzer."

In response to Applicant's argument that Hardwick fails to disclose a device capable of producing a moiré image in incident light (see Applicant's Arguments/Remarks pg. 12, lines 11-12), Examiner respectfully asserts that Hardwick explicitly discloses a moiré pattern being used (see paragraph 22), and indicates that the half-window forms a different image when viewed in incident light (see paragraph 57). However, although identified in the reference, note that it has been held that "Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability…." See In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983).

In response to Applicant's argument that Kaule fails to disclose color changes effected by interference (see Applicant's Arguments/Remarks pg. 13, lines 11-18), Examiner respectfully asserts that even assuming arguendo that Kaule fails to teach a color change caused by interference, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

In response to Applicant's argument that claim 24 is not obvious in view of Hardwick and Murakami (see Applicant's Arguments/Remarks pg. 14, lines 5-6), Examiner respectfully asserts that the claim is obviated by the combination, as set forth in the previous action.

In response to Applicant's argument that Drinkwater fails to disclose the second layer being part of a transfer layer of a transfer film which is applied to the first layer on the side of the carrier layer which is in opposite relationship to the first layer (see Applicant's Arguments/Remarks pg. 14, lines 11-15), Examiner respectfully asserts that the claimed limitations are disclosed by the art in the manner set forth in the previous action.

In response to Applicant's argument that Fell fails to disclose a loose moiré analyzer (see Applicant's Arguments/Remarks pg. 15, lines 2-3), Examiner respectfully asserts that the claimed limitations are disclosed by the art in the manner set forth in the previous action..